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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 748

DOMINICK ANGEL BRETTI,

Petitioner,

-v-

THE STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

MILTON E. GRUBMARK
Attorney for Petitioner
407 Lincoln Road
Miami Beach, Florida

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Petitioner prays that a Writ of Certiorari issue to review the Order of the District Court of Appeal, Third District of the State of Florida filed November 15, 1966.

OPINIONS BELOW

The Judgment of the Criminal Court of Record in and for Dade County, Florida was filed and entered on November 6, 1966. It is reported at Criminal Court of Record, Minute Book No. 187 on Page 384.

The Opinion of the District Court of Appeal, Third District was filed November 15, 1966. Rehearing was denied December 5, 1966. (Appendix A). It is reported at 192 So. 2d 6 (Fla. App. 1966).

The decision of the Supreme Court of Florida was filed on April 27, 1967. Petition for Rehearing was denied on May 24, 1967. (Appendix B). It is reported at 201 So. 2d 459 (Fla. 1967).

JURISDICTION

The Order of the Supreme Court of the State of Florida denying Certiorari was entered on May 24, 1967, upon a denial of a timely Petition for Rehearing. Mr. Justice Fortas extended the time for filing Petition for Writ of Certiorari to and including October 20, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3), because a title, right, privilege or immunity claimed under the Constitution or Statutes of the United States, was denied by the District Court of Appeal of Florida, Third District and under Rule 19 (1) (a) of the Rules of the Supreme Court of the United States, adopted June 12, 1967, and effective October 2, 1967, because a State Court decided a federal question of substance in a way probably not in accord with applicable decisions of this Court.

QUESTIONS PRESENTED

I

Whether the Petitioner was denied due process of law when prejudicial evidence which was seized following an arrest not based upon probable cause, without a search warrant and without express consent was admitted over his objection at his trial.

II

Whether the prosecutor's comment that the Defendant failed to explain the possession of certain evidence violated the Petitioner's right to remain silent at his own trial.

III

Whether prejudicial pre-trial publicity prevented a fair trial, essential to due process.

IV

Whether the Petitioner was denied due process when he was required to try his case with other Defendants against whom a mass of testimony and evidence prejudicial to Petitioner was admitted even though such evidence was not admissible as to the Petitioner.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES — AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

CONSTITUTION OF THE UNITED STATES —
AMENDMENT V.

. . . (N)or shall (any person) be compelled in any criminal case to be a witness against himself . . . .

CONSTITUTION OF THE UNITED STATES —
AMENDMENT XIV, SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 28 UNITED STATES CODE — SECTION 1257(3)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

RULES OF THE SUPREME COURT OF THE UNITED STATES, RULE 19

(1)(a) Where a state court had decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

STATEMENT OF THE CASE

At about 9:00 o'clock P.M. on the evening of February 9, 1965, Dr. Traub heard a knock on the front door of his home. Two men wearing fedora hats and dark glasses gained entrance when he answered the knock by leading him to believe that his wife, who had just left on an errand, had been involved in an automobile accident. After entering, the two men tied and gagged Dr. Traub and his house guest, Mrs. Fritzel. The house was ransacked and the men left with some valuable jewelry and furs belonging to Mrs. Traub and Mrs. Fritzel. At the time the men entered the home, Mrs. Fritzel was talking to a friend over the telephone and gave an alarm when she became aware of their purpose. As a result, two police cars approached the scene just as three men departed in a Falcon automobile. An officer in one of the police cars recognized the driver of the Falcon as the person he later identified as one of the co-defendants, Anthony Antone. He also made a note of the license number of the Falcon at the time. One of the officers in the other police car saw one person in the back seat of the Falcon whom he later identified as the co-defendant Lou Ghelfi.

A search for the Falcon automobile resulted in its discovery in a parking lot at the Apache Motel. A wit-

ness testified that during the early part of the evening, he observed three men get out of a Cadillac in the parking lot of the Apache Motel and leave in a car resembling a Falcon. Sometime later he saw the three men remove some bundles from the trunk of the Falcon and place them into the trunk of the Cadillac and depart from the lot. He made a note of the license number of the Cadillac and furnished it to the police when they arrived at the parking lot.

The officers ascertained that the Cadillac was owned by Anthony Antone and thereupon went to the apartment occupied by Antone at or about 5:30 or 6:00 o'clock A.M. in the morning of February 10, 1965. Upon their arrival at the apartment, the officer, after knocking, entered the apartment because the door, while closed, was not locked. They made a search of the premises and then waited until 11:00 o'clock A.M. in the morning at which time the three defendants, Antone, Ghelfi and Bretti entered the apartment and all three immediately were arrested. The officers had no search warrant to enter the premises nor did they have an arrest warrant.

Ghelfi gave "consent" to search his automobile which was parked outside Antone's apartment and a brown paper bag was discovered on the floorboards containing some of the jewelry stolen from Dr. Traub's home. The officers also searched Ghelfi's home and discovered two pistols.

After obtaining his "permission" to do so, they also searched Antone's automobile which was parked at a gas station several blocks away and found in the trunk a pillow case containing some furs stolen from Dr. Traub's

home. Later in the day the police again searched Antone's car which was parked in a garage, and there discovered two pistols.

After obtaining Bretti's "permission" to search his automobile as well as his apartment for "jewelry, furs and other things stolen in the robbery", the police found no such articles. They took a driver's license issued in the name of Joseph Arnello which was on the top of the refrigerator in his apartment. It was later discovered that this driver's license, which had never been issued to Joseph Arnello, had been missing from the North Dade Auto Tag Agency since February 15, 1964.

After examining the Arnello driver's license for identification a clerk at Merlin-Rent-A-Car Agency identified Bretti as the man who had rented the Falcon automobile from that agency on the afternoon of February 9th. The blue copy of the contract for the rental of the Falcon was found in the glove compartment of that automobile with one of Antone's fingerprints on it.

Fingerprints of Antone and Ghelfi were found on the Falcon automobile and Antone's fingerprints were found on the Cadillac. No fingerprints of Bretti were found anywhere.

Dr. Traub attended a line-up the day after the robbery and identified three men as the ones who looked most like the men that entered his home. One of the persons he so identified was an individual named Alphonso Robles. He later stated that he selected three men because the police told him to pick out three, but he had, in fact, seen only two at the time of the robbery.

Mrs. Fritzel also observed the line-up and identified three other men, none of whom was Petitioner Bretti.

Petitioner Bretti was charged with armed robbery.

On the morning of November 4, 1965, the Miami Herald carried an article which read, in part, as follows:

> "Antone 46, Bretti 31, and Ghelfi 28 are well known locally among police as highly competent burglars."

Based upon the above, a motion for mistrial was made and denied. (TR-386).

Antone testified that he had never been convicted of a crime and Petitioner Bretti also testified that while he had been convicted of one crime, he had never been convicted of burglary. Five out of six jurors admitted that they received the Miami Herald in their homes that particular day.

A verdict of guilty was returned on November 6, 1965. Motion for new trial was made and denied. Assignments of Error (TR-1203-1206) were asserted in the Florida District Court of Appeal, Third District, which affirmed the judgment and ruled against the federal questions presented. A Motion for Rehearing was also denied. A Petition for Writ of Certiorari in the Supreme Court of Florida was denied.

HOW THE FEDERAL QUESTIONS WERE RAISED AND PASSED UPON IN THE STATE COURTS

The federal questions here presented were raised as follows:

1. By a Motion to Suppress the Evidence, filed March 16, 1965 (TR-1148). Denied May 24, 1965 (TR-1153).

2. By a Motion for Severance filed October 19, 1965. (TR-1158). Denied (TR-1185).

3. By a Motion for Mistrial because of pre-trial publicity. (TR-386) Denied.

4. By a Motion for a Mistrial. (TR-1179) Denied.

5. In Assignments of Error in the Criminal Court of Record in and for Dade County, Florida. Assignments 5, 6, 7, 10, 11, 16, 17, and 19. On illegal search and seizure; Assignments 5, 10, 11, 16, and 17. On self-incrimination; Assignments 17. On due-process Assignments 6 and 7.

6. The District Court of Appeal, Third District of Florida, **Bretti v. State,** 192 So. 2d 6 (Fla. App. 1966), stated on page 7: "The arrest without warrant was based on probable cause. The motion to suppress evidence . . . was properly denied. The searches were made with consent. The comment by the prosecutor . . . did not amount to a comment by the prosecutor on failure of defendants to testify in their own behalf. A newspaper article published during the trial . . . was not the basis for mistrial."

7. The Supreme Court of Florida failed to take jurisdiction by denying Certiorari on May 24, 1967.

REASONS FOR GRANTING THE WRIT

I

The Petitioner submits that he was denied due process of law when harmful evidence which was seized following an arrest not based upon probable cause, without a search warrant and without express consent was admitted over his objection at his trial.

This Court has, in recent years, been emphatic in the proposition that the search of a defendant or his home must be in conformity with the Constitutional guarantees of the Fourth Amendment. In **Mapp v. Ohio,** 367 U.S. 643 (1961), it said:

> "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court." (p. 655)

This Court then quoted from the case of **Boyd v. United States,** 116 U.S. 616, (1886) and said, "Constitutional provisions for the security of person and property should be liberally construed . . . ".

In **Ker v. California,** 374 U.S. 23 (1963) this court said that the reasonableness of the search is determined in light of the fundamental criteria laid down by the Fourth Amendment. The determinations of the State Courts as to constitutional rights are not insulated against examination.

In the light of these Constitutional interpretations, the Petitioner submits that the search of his room and the resultant use of the driver's license found therein was illegal and that his conviction based upon the use of this illegal evidence should be overturned.

The Petitioner's room was searched without a warrant. Therefore, to be permissible, it must be incident to a lawful arrest. **Preston v. United States,** 376 U.S. 364 (1964). Whether an arrest was constitutionally valid depends upon whether, at the moment the arrest was made, the officers had probable cause to make it — whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that **the petitioner** had committed or was committing an offense. **Beck v. Ohio,** 379 U.S. 89 (1964). The arresting officers had not one shred of reasonable grounds or probable cause to arrest Petitioner Bretti. When the police received a communication from an informer concerning an automobile owned by Antone, they went to his apartment to arrest only him (TR-538). They would have arrested **anyone** with Antone, testified Captain Morgan (TR-548). It is to be remembered that the defendant was not arrested on the night of the crime but on the next day. It could not be assumed, therefore, that the three men were fleeing from the crime together.

Even if the arrest was lawful, which it was not, the search was still not incident thereto. This court has held that a search is illegal if the premises searched is separate from the place where the arrest was made. **Silverthorne Lumber Co. v. United States,** 251 U.S. 385 (1920); **Agnello v. United States,** 269 U.S. 20 (1925). In the case

at bar, the Petitioner was arrested in Antone's room and taken to his own room which was then searched. Petitioner submits that generally police have been given the right to search a suspect without a warrant in order to seize hidden weapons or contraband which might be destroyed before a search warrant can be obtained. In this case, the police had the defendants in custody in a separate part of the building. They could easily have secured a search warrant without any of the inherent dangers of waiting. Petitioner does not contend that the evidence was "mere" evidence or that it should be suppressed for that reason. Thus, **Warden, Maryland Penitentiary v. Hayden,** 87 S.Ct. 1642 (1967), does not apply.

In the case at bar, the Petitioner's apartment was searched for specific items of the crime, and at the time the license was seized, the searching officer did not know that it related to the crime. (MR-101). The right to search incident to a lawful arrest is not a right to conduct a general exploratory search in the hope that evidence of a crime might be found. Such a search is tantamount to an unlawful invasion of the premises. **Go-Bart Importing Co. v. United States,** 282 U.S. 344 (1931).

The District Court of Appeal, Third District, of Florida held that the Petitioner had given his "permission" to the police to search his apartment. If this were true, then the evidence then seized would have been admissible at his trial.

This Court has not yet established the guidelines for determining the validity and effect of consent by the suspect to a search of his home. However, in other areas where the prosecution has asserted that the defendant has

"waived" a substantial constitutional guarantee, this court has been emphatic in its ruling.

In **Miranda v. Arizona**, 16 L.Ed 2d 692 (1966) where the defendant "waived" his right to remain silent, this court held that "unless adequate protection devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice." (p. 714) Surely the right to remain secure in one's home is as important as the right to remain silent.

The lower federal courts and some state courts have cast a questioning eye upon supposedly voluntary searches. In perhaps the landmark case on the subject, **Judd v. United States**, 190 F2d 649, 650-51 (CADC 1951) the court said:

> Searches and seizures made without a proper warrant are generally to be regarded as unreasonable and violative of the Fourth Amendment. True, the obtaining of the warrant may on occasion be waived by the individual; he may give his consent to the search and seizure. **But such a waiver or consent must be proved by clear and positive testimony, and it must be established that there was no duress or coercion, actual or implied.** The Government must show a consent that is "unequivocal and specific" . . . "freely and intelligently given." Thus "invitations" to enter one's house, extended to armed officers of the law who demand entrance, are usually to be considered as invitations secured by force. A like view has been taken where an

officer displays his badge and declares that he has come to make a search . . . even where the householder replies "All right." A finding of consent in such circumstances has been found to be "unfounded in reason". Intimidation and duress are almost necessarily implicit in such situations; if the Government alleges their absence, it has the burden of convincing the court that they are in fact absent.

The burden on the government is particularly heavy in cases where the individual is under arrest. Non resistance to the order or suggestions of the police is not infrequent in such a situation; true consent, free of fear or pressure, is not so readily to be found. (Emphasis added.)

In the case at bar, the Petitioner testified at the hearing to suppress the evidence that he had not given permission to the police to search his apartment: (MR-36)

"Q. Did you give them permission to search the room?
A. No, I didn't."

The Petitioner also testified: (MR-30)

"A. Well, two men came out with shotguns and told us to put our hands up. They told us to come inside the apartment and not to make any moves or we would be dead."

In **Weed v. United States**, 340 F.2d 827 (1965), the court said:

> (A)ppellant's surrender of the Cadillac keys occurred while he was in custody after he had been told upon his inquiry that the arresting officers had no warrant but could get one if necessary, and during a period of dramatic excitement of drawn guns. We have no hesitancy in holding that under these circumstances the alleged consent was not 'freely and intelligently given.'

Jerry Bishop, a police officer, testified: (MR-103)

> "A. (W)e told him that we didn't have a warrant, but we could search it anyway."

In **Barnes v. State**, 25 Wis. 2d 116, 130 NW 2d 264 (1964), the court held that the consent was involuntary because the defendant was under arrest and had been informed by one of the officers that the arrest justified the search. The opinion noted that the government's burden of proving voluntary consent is greater when the defendant is under arrest and when **the defendant knew he would be searched whether he consented or not.**

As this Court pointed out in **Miranda v. Arizona, supra,** a simple warning is not sufficient to waive a Constitutional Right; the waiver must be **knowingly** made by the defendant.

Petitioner submits that under the circumstances of this case, there could never have been a KNOWING

waiver of constitutional rights nor any real consent to the search.

Even if the consent to search had been knowingly granted the driver's license seized was inadmissible evidence against this defendant because the searching police officer testified (MR-100) that the consent was limited to a search for **jewels and furs.** If a warrant had been secured the search would have been limited to the articles described therein. Thus, since consent merely takes the place of a warrant, a consentual search is similarly limited to one for the specific articles described by the officer who acquired the defendant's consent. It would seem totally inconsistent with the Fourth Amendment protections to say that, as a substitute for a valid search warrant, such limited consent could grant wider powers to search than an issued warrant specifically limited in its scope.

It is generally considered that a trial court is the best arbiter of the facts and that its ruling as to whether evidence should be admitted should be sustained. In this case the trial court said:

> "THE COURT: For one reason only, I am going to deny your motion and admit it. This is poor jurisprudence, and I will say it in the record, but, nevertheless, because the State cannot appeal from a Motion to Suppress, I am going to deny your Motion and admit it, and state right here that the Court is, nevertheless, of the opinion that the State is committing reversible error." (TR-603)

Petitioner now submits that the driver's license taken from his motel room was taken in violation of the Fourth and Fourteenth Amendments of the Constitution of the United States and that its use at his trial resulted in prejudice to his cause and for this reason his Petition for Writ of Certiorari should be granted.

II

The Prosecutor's comment that the defendants failed to explain the possession of certain evidence, violated the Petitioner's right to remain silent at his own trial.

In his closing argument to the jury, the prosecutor said:

> "Now we have got the furs; we have got the jewels; we have got the loot, and we have no reasonable explanation at that time to Capt. Morgan, either by Ghelfi or by Antone." (TR-1079)

> The District Court of Appeal in its opinion said: "The comment by the prosecutor . . . did not amount to a comment by the prosecutor on failure of defendants to testify in their own behalf". (Appendix A).

The natural effect of the comment by the prosecution was to bring to the jury's attention that the defendant had not explained his co-defendants' possession of the loot. Even though the prosecutor said "at that time" the stigma of the failure to testify was attached to the

trial. This Court in **Griffin v. California**, 380 U.S. 609, 615 (1965) said:

> We . . . hold that the Fifth Amendment . . . in its bearing on the States by reason of the Fourteenth Amendment, forbids . . . comment by the prosecution on the accused's silence . . . .

In determining what is comment on the defendant's failure to take the stand, the Florida District Court of Appeal has said:

> A comment made by a prosecuting attorney, directly or indirectly, which is subject to interpretation by a jury as a comment upon failure of a defendant to testify has been strictly regarded as impingment on the substantial right of the defendant . . . . **Flaherty v. State**, 183 So. 2d 607, 609 (1966)

The Florida Supreme Court has held that a comment on a defendant's failure to explain possession of recently stolen property is reversible error; so to is a comment upon a co-defendant's failure to testify. **Singleton v. State**, 183 So. 2d 245 (1966). In **Hayes v. United States**, 329 F. 2d 209, 222 (CA 8th Cir. 1964) the court said, "Permitting comment upon the failure of a defendant to testify constitutes prejudicial error as to the non-testifying defendant."

The Petitioner testified in this case; however, this testimony was limited to a denial of the allegations of a local newspaper which impuned a past conviction of burglary to the Petitioner. Petitioner submits that where

a defendant takes the stand in a limited capacity he does not waive the protection of "no-comment". If this were considered a waiver, then he would have to forego one constitutional right in order to exercise another. This would be neither just nor equitable.

Petitioner submits that the comment of the prosecutor had to be interpreted by the jury as a comment on the Defendant's failure to take the stand in his own defense. Therefore, his constitutional right to remain silent

was denied and his Petition for Writ of Certiorari should be granted.

III

Prejudicial pre-trial publicity prevented the Petitioner from having the fair trial essential to due process.

On the morning of the second day of trial, the Miami Herald, the largest metropolitan newspaper in Dade County, printed a story imputing previous conviction records for burglary to the defendants. Although five out of the six jurors in the panel had received that newspaper in their homes that morning, the trial court did not examine the jury separate and apart from each other to ascertain what effect, if any, the newspaper article had upon them, and a motion for mistrial was denied.

In **Shepard v. Maxwell**, 384 U.S. 333 (1966), this Court made an exhaustive review of the current law on the question of pre-trial and trial publicity. In that opinion this Court said:

Among those legal procedures is the require-

> ment that the jury's verdict be based on evidence received in open court, not from outside sources. . . . (W)e set aside a federal conviction where the jurors were exposed "through news accounts" to information that was not admitted at trial. We held that the prejudice from such material may indeed be greater "than when it is part of the prosecution's evidence" for it is then not tempered by protective procedures. At the same time we did not consider dispositive the statement of each juror "that he would not be influenced by the news articles, that he could decide the case only on the evidence of record, and that he felt no prejudice against the petitioner as a result of the articles." (p. 351)

In the case at bar the question is not whether or not the jury was in fact prejudiced, this would be impossible to determine now that the trial is over. Where there is a possible prejudice in the jury, the trial court should make every effort to determine whether it is there and if so to either wipe it out or grant a mistrial or continuance. In **United States v. Accardo**, 298 F. 2d 133 (1962), the jury had been exposed to information about the defendant's prior record. The court said:

> The judge's general admonitions at the beginning of the jury selection, his assumption of their effectiveness and his instructions were inadequate protection. There is no certainty that all jurors would volunteer information about violating the admonitions or admit that they were influenced by the publicity. He should have, by the careful examination of each juror, out of

> the presence of the other, determined the effect of the articles on those who had read them and whether they had discussed the articles with others. These individual interviews would have tended to overcome reluctance to speak out. (p. 136)

A prior record of the Petitioner, if there was one, would undoubtedly have been very prejudicial on the jury if it had come to their attention. The trial court should have made a more extensive investigation of the jury to see if any were prejudiced by the newspaper article. By the trial court's failure to do so, the Petitioner was denied due process of law and for this reason this Petition for Writ of Certiorari should be granted.

IV

The Petitioner was denied due process when he was required to try his case with other defendants against whom a mass of prejudicial testimony and evidence was admitted even though such evidence was not admissible as to the Petitioner.

During the course of this trial incriminating evidence was admitted showing that two of the defendants were at the scene of the crime and were subsequently in possession of the fruits of the crime. Even though this evidence alone provided the backbone of the State's case, none of it was admissible as to the Petitioner. For this reason a Motion for Severance was made to the trial court.

The nature of the foregoing evidence was such that

it was impossible for the jury to separate evidence admissible against the co-defendants from the evidence which was inadmissible against this defendant.

The totality of the evidence presented in this case was very persuasive and could easily have been the basis for the conviction of the other two defendants. The evidence against the Petitioner, however, was only of the type which could show some slight connection between him and the other two defendants. Yet during the trial, the evidence was presented so that the jury could not help but attach the persuasiveness of the documentary evidence to the guilt of the Petitioner.

In **United States v. Haupt**, 136 F. 2d 661 (1943) and **Schaffer v. United States**, 221 F. 2d 17 (1955), the courts held that where the evidence is such that the jury cannot distinguish its effects against joint defendants, then it is error for the court to deny a severance requested by one of the defendants.

The very nature of the joint trial is such that it denies each defendant due process. Each defendant is denied the possible exculpatory statements that could be gained if he were able to call the other defendants to the stand. Also the very association of one man against whom the case if strong with another man against whom the case is less convincing in a court of law under the auspices of a judge has an inescapable tendency to incriminate the defendant against whom the evidence is less incriminating.

The classic argument in favor of joint trials is that they are convenient and economical. This argument was

correctly rejected in **DeLuna v. United States**, 324 F 2d 375 (CA 5th 1963) when it said:

> The overriding consideration in all criminal cases is measured justice according to the Constitution. The inconvenience of a severance and the possibility of a mistrial if there should be a joint trial of co-defendants do not tip the scales for the Government when an accused's right to silence is in the balance. (p. 376)

It has been argued that the prejudicial effect of the joint trial can be overcome by the court's instruction to the jury to disregard the non-applicable testimony. In **Krulewitch v. United States**, 336 U.S. 440, Mr. Justice Jackson asserted:

> (T)he naive assumption that prejudicial effects can be overcome by instructions to the jury . . . all practical lawyers know to be unmitigated fiction.

Petitioner, therefore, submits that by trying his cause with other defendants where a great mass of evidence was admissible to those defendants but not to him, he has been denied due process and for that reason this Petition for Writ of Certiorari should be granted.

CONCLUSION

The Petitioner, Bretti, was arrested merely because he was with a man who happened to be suspected of committing a crime. He was then taken to his apartment where it was searched without a warrant. A driver's li-

cense was taken from his apartment without his consent and was used by the jury to convict him. During argument, the Prosecutor placed an onus of guilt upon the defendant by his reference to the other defendants' failure to explain their possession of the fruits of the crime. The jury was exposed to a newspaper article which indicated that the defendant had a prior record of similar crimes. This evidence was inadmissible at his trial.

These are the salient facts of the case. They do nothing but show that the entire proceedings deprived the Petitioner of basic Constitutional guarantees. Even though each of these facts standing alone would entitle the Petitioner to the granting of the Petition, it is submitted that also under **Getchell v. United States**, 282 F. 2d 681 (1960), the accretion of error was a deprivation of due process.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MILTON E. GRUSMARK
Attorney for Petitioner
407 Lincoln Road
Miami Beach, Florida

By: _____
Milton E. Grusmark

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that a true copy of the foregoing Petition for Writ of Certiorari was mailed to HON. EARL FAIRCLOTH, Attorney General, The Capitol Building, Tallahassee, Florida, this 19th day of October, 1967.

Milton E. Grusmark